

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE SOUTHERN DISTRICT OF OHIO

3 AT CINCINNATI

4

5 TEDDY NICHOLS CASE NO.

6 Plaintiff C-1-02-0045

7 Versus

8 INDIANA MICHIGAN POWER

9 CO. RIVER TRANSPORTATION

10 DIVISION and/or AMERICAN

11 ELECTRIC FUEL SUPPLY,

12 RIVER TRANSPORTATION

13 DIVISION JUDGE BECKWITH

14

15 Deposition of RON CAMPANA taken

16 before Julianne W. Andressen, Certified

17 Court Reporter in and for the State of

18 Louisiana, in the offices of Campana

19 Marine, 4432 Wabash Street, Metairie,

20 Louisiana, on Wednesday, March 24, 2004.

21

22 REPORTED BY:

23 JULIANNE W. ANDRESSEN

24 Certified Court Reporter

25

1 A P P E A R A N C E S:

2

3 Representing the Plaintiff:

4 O'BRYAN, BAUN & COHEN

5 (BY: Gary Wm. Baun, Esq.)

6 401 S. Old Woodward

7 Suite 320

8 Birmingham, MI 48009

9

10

11 Representing the Defendants:

12 SCHROEDER, MAUNDRELI, BARBIERE & POWERS

13 (BY: Todd M. Powers, Esq.)

14 11935 Mason Road

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1 EXAMINATION INDEX

2

3 Stipulation Page 4

4 Examination by Mr. Powers Page 5

5

6

7 EXHIBIT INDEX

8

9 No. 1 Report of Ron Campana
10 dated 12/20/03 Page 34

11

12

13 No. 2 Curriculum Vitae Page 35

14

15

16 No. 3 Photos taken by
17 Ron Campana Page 80

18

19

20 No. 4 Videotape taken
21 by Ron Campana Page 83

22 (Not tendered to the
23 court reporter)

24

25

1 S T I P U L A T I O N

2 It is stipulated and agreed by
3 and between Counsel for the various parties
4 hereto that the deposition of RON CAMPANA
5 may be taken for all discovery and all
6 other purposes, in accordance with the
7 Federal Rules of Civil Procedure, at the
8 time and place hereinabove recited;

9 That all formalities save those
10 of reading and signing are hereby
11 specifically waived;

12 That all objections, save
13 objections as to the form of the questions
14 and the responsiveness of the answers, are
15 reserved until such time as this
16 deposition, or any part hereof, is used or
17 sought to be used in evidence at the time
18 of the trial of this matter.

19 * * * * *

20 JULIANNE W. ANDRESSEN
21 Certified Court Reporter in and for the
22 State of Louisiana, officiated in
23 administering the oath to the above-named
24 witness.

25

1 RON CAMPANA,
2 640 Brouilly Drive, Kenner, Louisiana
3 70065, after having been first duly sworn
4 in the cause by the above-named Certified
5 Court Reporter, testified on his oath as
6 follows:

7 EXAMINATION BY MR. POWERS:

8 Q. State your name for the record,
9 please.

10 A. Ronald Louis Campana.

11 Q. Mr. Campana, you and I met before
12 in another case where you were an expert,
13 and I know you have been deposed several
14 times. How many times would you say you
15 have been deposed in the past five years?

16 A. (No response).

17 Q. Well, let me say this: The last
18 time I took your deposition you said you
19 thought you had given 50 depositions
20 throughout your career. Does that sound
21 right?

22 A. Yes, sir.

23 Q. So you know what the rules are?

24 A. Yes, sir.

25 Q. I am going to ask you questions,

1 you are going to give me accurate answers;
2 and if you don't understand the question,
3 you are going to tell me; right?

4 A. Correct.

5 Q. Okay. Tell us where we are
6 today. We are in your office. What is the
7 name of the company here?

8 A. Campana Marine Service, Inc.

9 Q. And that is one company that you
10 are affiliated with; is that correct?

11 A. Yes, sir.

12 Q. What other companies are you
13 affiliated with?

14 A. Federal Marine Bureau, LLC and
15 Captain Joe Gray Surveyors, LLC.

16 Q. Which organization or company,
17 entity, whatever you want to call it are
18 you representing in testifying in this
19 case?

20 A. Campana Marine Service, Inc.

21 Q. Are there any other individuals
22 who have a financial interest in that
23 entity besides yourself?

24 A. My wife.

25 Q. But you do the work here; right?

1 A. Correct.

2 Q. Do you have any employees?

3 A. No.

4 Q. Tell me what Campana Marine

5 Service does.

6 A. Independent marine surveyors and

7 consultants.

8 Q. And tell me what Federal Marine

9 Bureau, LLC -- Is that what it is?

10 A. Yes, sir.

11 Q. Tell me what Federal Marine

12 Bureau, LLC does.

13 A. Independent marine surveyors and

14 consultants.

15 Q. And what was the other?

16 A. Captain Joe Gray Surveyors, LLC.

17 Q. Captain Joe Gray Surveyors, yes.

18 What does that company do?

19 A. The exact same thing, independent

20 marine surveyors and consultants.

21 Q. You also have from time to time

22 been identified and testified as an expert

23 in marine cases; is that correct?

24 A. Yes, sir.

25 Q. Can you tell me how many times

1 you have been retained to testify in cases
2 involving litigation? Go ahead and see if
3 you can answer it that way. I can break it
4 down if you want me to.

5 A. In my career?

6 Q. Yes, sir.

7 A. It would just be a guess, over a
8 hundred.

9 Q. Have any of those cases involved
10 a situation similar to the one that we are
11 dealing with here where an individual was
12 injured and the claim is that the unloading
13 operation, if you will, that's what I am
14 going to call this operation, this Sporn
15 plant operation, was improperly conceived
16 or dangerous or created an unsafe work
17 place, have you ever testified in a case
18 where you have rendered opinions such as
19 those that you have in this case?

20 A. I honestly don't remember.

21 Q. Okay. I have your home address
22 as 640 -- Is it Brouilly?

23 A. Brouilly; right.

24 Q. B-r-o-u-i-l-y?

25 A. It's double "l."

1 Q. Two "l's", okay. And that is in

2 Kenner?

3 A. Yes, sir.

4 Q. What is your date of birth, sir?

5 A. 10/17/47.

6 Q. And you have a degree from Kings

7 Point, don't you?

8 A. Yes, sir.

9 Q. What is the degree?

10 A. A Bachelor of Science in marine

11 transportation.

12 Q. Any education or training beyond

13 that degree?

14 A. Other than the self-study course

15 in the National Cargo Bureau Grain

16 Stability, that's it.

17 Q. You are not an engineer?

18 A. No, sir.

19 Q. And you do not claim to have

20 expertises in engineering?

21 A. No, sir.

22 Q. You are not an ergonomist and

23 don't plan to have expertise in that area;

24 is that fair?

25 A. That's fair.

1 Q. Can you tell me what expertise it
2 is that you bring to this case that makes
3 you represent yourself to the Court as an
4 expert?

5 A. Marine safety, marine operations,
6 vessel operations, common sense.

7 Q. Marine safety --

8 A. Right; marine operations, vessel
9 operations --

10 Q. -- and common sense?

11 A. Yes.

12 Q. Tell me what training, what
13 formal training you have had in marine
14 safety.

15 A. Thirty years in the industry and
16 being a vessel master.

17 Q. So that would be on-the-job
18 experience?

19 A. Yes.

20 Q. Tell me what specific formal
21 training you have had in marine operation,
22 or maybe you said marine operations, is
23 that what --

24 A. Well, in marine operations I was
25 a director of operations, manager of

1 operations for Prudential Lines, a
2 steamship company in New York, with the
3 barge operations worldwide.

4 Q. So on-the-job training --
5 on-the-job experience, not training, but
6 on-the-job experience is what you're
7 saying; correct?

8 A. Well, our education at Kings
9 Point and the degree in marine
10 transportation and then the skills that you
11 were taught at Kings Point and the
12 education applied in the real world, yes.

13 Q. Okay. I want to make sure that I
14 understand that what you are saying is from
15 the time you left Kings Point, with respect
16 to marine operations you have not had any
17 additional formal training; is that fair?

18 A. Yes, sir.

19 Q. And vessel operation, same
20 questions, have you had any formal training
21 beyond the training you received at Kings
22 Point?

23 A. No, sir.

24 Q. Have you ever yourself designed a
25 system that had as its goal unloading

1 barges in a fashion that is involved here
2 at this Sporn plant? In other words, at
3 the Sporn plant, do I understand correctly
4 that barges are brought in loaded with coal
5 and they are unloaded for use in the plant?

6 A. Correct.

7 Q. All right. Have you ever
8 designed a system, an unloading system for
9 barges such as the one involved in the
10 Sporn plant?

11 A. No, sir.

12 Q. Have you ever been involved in
13 the mechanical construction of such a
14 system?

15 A. No, sir.

16 Q. Have you been around such
17 systems?

18 A. Yes, sir.

19 Q. When and where?

20 A. In the past 20 years in the Lower
21 Mississippi River, I represent all the
22 major gantry terminals.

23 Q. When you say that you represent
24 the gantry terminals, in what capacity do
25 you represent them?

1 A. As a consultant and independent
2 surveyor.

3 Q. And as a consultant and
4 independent surveyor for those gantry
5 terminals -- Now, by the way, what is a
6 gantry terminal, just so that we are on the
7 same page here.

8 A. That's a short crane that uses a
9 grab bucket to discharge bulk material.

10 Q. Okay. Tell me which gantry
11 terminals we are talking about on the Lower
12 Mississippi.

13 A. At Burnside Terminal a division
14 of Ormet, International Marine Terminals
15 down at Myrtle Grove, IC Marine Railroad up
16 in Convent, and the Mississippi River Gulf
17 Outlet, for 15 years it was the New Orleans
18 Public Terminal, a public bulk terminal
19 which no longer exists.

20 Q. Is coal unloaded at any of those
21 facilities?

22 A. Yes, at IMT. Also, Electro-Coal
23 Terminal down Davant.

24 Q. Electro-Coal Terminal?

25 A. Yes.

1 Q. Is that a NEMCO operation?

2 A. IMT is. IMT through -- It's a
3 division of NEP --

4 Q. All right. And how long have you
5 represented them?

6 A. IMT?

7 Q. Yes.

8 A. Seven, eight years.

9 Q. Do they know you are testifying
10 in this case?

11 A. IMT?

12 Q. Yes.

13 A. No.

14 MR. BAUN:

15 I am going to make an
16 objection as to use of that knowledge
17 outside of this proceeding.

18 MR. POWERS:

19 Well, that's between him
20 and them. I don't care.

21 THE WITNESS:

22 I don't discuss any of the
23 legal cases with any of my clients unless
24 the client is involved in the case.

25 MR. POWERS:

1 Okay.

2 EXAMINATION BY MR. POWERS:

3 Q. I asked you which of these
4 terminals unloaded coal and you told me
5 that. Tell me what your representation has
6 involved with respect to any of these
7 terminals. In other words, have you
8 consulted with respect to the design or the
9 mechanical operation of the unloading
10 facilities?

11 A. No.

12 Q. Has your consulting been limited
13 to vessel issues?

14 A. Vessel, cargo and personal
15 injury.

16 Q. And when you say personal injury,
17 have any of the personal injuries involved
18 someone who claims to have gotten jerked by
19 a pullout cable or some similar mechanism
20 in an unloading process?

21 A. Not with terminals; in fleeting
22 barges picking up shore wires, yes.

23 Q. Have you ever been to Huntington
24 Terminal?

25 A. No.

1 Q. Have you ever been to any of the
2 coal unloading terminals on the Ohio or the
3 Conar (spelled phonetically) River, other
4 than the Sporn plant?

5 A. No.

6 Q. Do you know through your
7 experience, your training or from any
8 source of information the method, the
9 design or the mechanical operation used at
10 those facilities on the Ohio and Conar
11 River for unloading coal?

12 A. Some of them, yes.

13 Q. And how do you -- First of all,
14 how do you have that information?

15 A. From the safety video in this
16 case that was produced and from another
17 expert in the case that we were both
18 involved in, Captain Pat Jameson.

19 Q. Captain Jameson is not in this
20 case, that I know of.

21 A. No.

22 Q. Okay. Have you talked to Captain
23 Jameson about this case?

24 A. Not specifically about this case.
25 We had discussions over the past year in

1 general about terminals, Lower Mississippi
2 versus the different terminals --

3 Q. Are you relying on the
4 information that Mr. Jameson gave you?

5 A. No.

6 Q. Okay. You said that you have
7 given 50 depositions approximately in your
8 career, and I asked you how many times -- I
9 think I asked you, if I haven't I am going
10 to ask you, how many times you have been
11 retained in the last four years. Do you
12 have some idea, or do you have a list of
13 cases in which you have been retained over
14 the last four years?

15 A. No. I only have a list of the
16 cases I gave a deposition or went to court
17 in.

18 Q. How many of the cases that you
19 have listed in your disclosure involved
20 cases in which you were retained or called
21 on behalf of the defendant? And if you
22 want to give me a percentage --

23 A. It's pretty close to 50/50.

24 Q. Have you ever rendered an
25 opinion, to your recollection, that a

1 particular type of unloading mechanism or
2 design, and again I am referring back to
3 this Sporn situation where there is an
4 unloading of bulk cargo, was reasonably
5 safe?

6 A. In the past four years or ever?

7 Q. Ever.

8 A. Once again, I honestly don't
9 remember.

10 Q. Okay. Do I understand,
11 Mr. Campana, that the vast bulk of your
12 work involves representing stevedores to
13 ascertain the condition of cargo?

14 A. No. That's about 50 percent of
15 my business.

16 Q. What is the rest of your
17 business?

18 A. To represent owners, charterers,
19 receivers of cargo.

20 Q. How does that differentiate
21 from -- Oh, okay, so all of it deals with
22 cargo. Half of your representation is
23 stevedores and half of your representation
24 is the owners of the cargo?

25 A. Well, it doesn't all deal with

1 cargo. If there is damage, vessel damage,
2 vessel condition surveys, consulting. I am
3 a consultant to my stevedores that I
4 represent on their daily operations in a
5 roving mode. And by that I mean when I am
6 out there. And it could be for them, it
7 could be for another one of my clients that
8 they are doing work for.

9 Q. What does that involve when you
10 are consulting for a stevedore?

11 A. If I see something that I think
12 is of an improper or an unsafe nature, then
13 I report it to my client.

14 Q. Have you ever had a situation
15 where you made a recommendation that a
16 method that was being used for unloading
17 cargo was changed?

18 A. Yes.

19 Q. Can you tell me when that was and
20 what the recommendation was and the
21 circumstances.

22 A. Numerous times throughout the
23 years when they would be loading older
24 barges and they would want to load one end
25 and the other and put nothing in the

1 middle.

2 Q. Which might lead to hogging the
3 barge; right?

4 A. Hogging or sagging of the barge;
5 correct.

6 Q. Any other examples where you have
7 given recommendations concerning how a
8 vessel should be loaded or unloaded or how
9 it should be moved in the process of that
10 happening?

11 A. Well, that is also part of my
12 routine. In the discharge of the vessels,
13 specifically at the Burnside Terminal, we
14 meet with the captain and the chief officer
15 and we discuss the discharge rotation or
16 the loading rotation for the safety of the
17 vessel and for the safe handling of cargo
18 and the safety of the stevedores.

19 Q. Have you ever been involved,
20 Mr. Campana, in authoring safety rules or
21 procedures for any facility similar to the
22 Sporn plant?

23 A. No, sir.

24 Q. And as I understand it, you have
25 no formal training in safety; is that

1 correct?

2 A. Correct.

3 Q. Do I understand that you have
4 never had as your primary responsibility
5 the training of crew members aboard
6 vessels, safety training?

7 A. No. As master, I was responsible
8 for the safety training.

9 Q. Tell me what that involved.

10 A. The application of good marine
11 practices and safe practices.

12 Q. Were you ever given the duty or
13 charged with creating an instruction film
14 for either seamen or stevedores?

15 A. No, sir.

16 Q. And I think you said you have
17 never authored safety rules. Have you ever
18 authored procedures for individuals
19 unloading bulk cargo from barges, any
20 written procedures?

21 A. No. But I've got to correct
22 something. I have authored the procedures
23 for the loading and unloading of LASH
24 barges.

25 Q. Okay, tell me about that. What

1 was your involvement with that?

2 A. As the director -- or I shouldn't
3 say director, as the manager of operations
4 for Prudential Lines I authored, developed
5 and established worldwide, which in that
6 time was the Mediterranean and the United
7 States, the air test procedure for testing
8 LASH barges for suitability to carry cargo
9 and the proper procedure for loading that
10 cargo and the procedures, if the barges
11 were found defective what to do.

12 Q. There were some measurements
13 taken, some forces measured. There was an
14 analysis done of the forces exerted on
15 these employees by Mr. Herrin (spelled
16 phonetically). Did you have anything to do
17 with any of that part of the testing and
18 investigation of this case?

19 A. Other than witnessing it, no.

20 Q. Okay. Tell me what it is that --
21 Well, let me ask you first: What --
22 Obviously, you are being paid in this case.
23 What are you charging Mr. Baun for the work
24 that you are doing?

25 A. A hundred seventy-five an hour

1 plus expenses.

2 Q. You are charging him \$175.00 per
3 hour for everything you are doing in the
4 case?

5 A. Yes.

6 Q. And that includes --

7 A. Except travel time.

8 Q. And what do you charge travel
9 time?

10 A. One fifty an hour.

11 Q. Trial testimony time?

12 A. One seventy-five an hour.

13 Q. And --

14 A. No, I take that back, it's \$350
15 an hour.

16 Q. Okay. So testimony is \$350 an
17 hour. Everything else is \$175 an hour,
18 except travel, which is \$150 an hour?

19 A. Right.

20 Q. Any idea how much you billed him
21 so far?

22 A. I think with expenses, airplane
23 fares and everything else about \$5,000.

24 Q. How many active cases do you have
25 presently that you are involved in from a

1 consulting standpoint? And now I am
2 talking about cases in litigation.

3 A. The accounts folder is behind my
4 desk, I could tell you. Probably 15, 20.

5 Q. What percentage of your income
6 over the last, let's say, three years has
7 been derived from consulting as opposed to
8 your -- and, again, I am talking about
9 forensics consulting, consulting on cases
10 in litigation -- as opposed to the other
11 work that you have described your various
12 entities do?

13 A. In the neighborhood of 10
14 percent, somewhere around there.

15 Q. Okay.

16 A. Or less.

17 Q. Have you ever been stricken as an
18 expert witness or excluded as an expert
19 witness?

20 A. No, sir.

21 Q. Have you ever been offered as an
22 expert witness in a case similar to this
23 one? Do you know what I mean by "offered"?
24 Tendered.

25 A. Yes. With these exact

1 circumstances, no.

2 Q. Have you ever testified as an
3 expert witness, and I think I have an
4 answer to this, but have you ever testified
5 as an expert witness expressing opinions on
6 similar subject matter as you are
7 expressing in this case?

8 A. Parts of it, yes.

9 Q. Which parts?

10 A. The handling of a shore wire, for
11 lack of a better word, by only one
12 individual.

13 Q. Any other parts?

14 A. No.

15 Q. When did you render opinions
16 concerning the handling of a shore wire by
17 more than one individual, or by only one
18 individual, I think is what you said.

19 A. I believe it was a few cases ago.
20 A few cases in the past.

21 Q. If you look at your list, would
22 that help you?

23 A. No. They didn't go to court.
24 They settled it.

25 Q. Okay. Do you remember which

1 lawyers you were working with, the names of
2 the cases, anything like that?

3 A. Well, I am working with one right
4 now with John Young.

5 Q. All right, let's start with John
6 Young's case. Tell me what specifically is
7 involved in that case.

8 A. It's a deckhand. There was a tow
9 of barges coming in looking for the shore
10 wire to hook up.

11 Q. And in that case, the shore wire
12 was a wire that was attached to a deadman
13 and probably had sunk down in the water and
14 he had to somehow pull it out. Am I close?

15 A. He had to pull it up with a spike
16 pole by himself at night, yes, sir.

17 Q. I have had that case before.

18 A. That's a current case.

19 Q. Okay.

20 A. I will be rendering that opinion.
21 I haven't rendered it yet.

22 Q. Who is the lawyer on the other
23 side of that, do you know?

24 A. Someone from Burke & Meyer.

25 Q. And you have not given a

1 deposition yet in that case?

2 A. No.

3 Q. Have you issued a report yet in
4 that case?

5 A. No. It's due by the end of this
6 week, by next week.

7 Q. Do you know the plaintiff's name
8 in the case?

9 A. Josh Blessy -- no, Josh Levins
10 versus Blessy Marine.

11 Q. Blessy Marine would be the
12 defendant?

13 A. Yes.

14 Q. Any other cases where you have
15 rendered opinions similar to those set
16 forth in your report in this case?

17 A. I don't remember the names, but
18 it was the same situation.

19 Q. But that is the only similar
20 opinion --

21 A. Yes, sir.

22 Q. -- involving a shore wire. And
23 has your opinion been consistent in all
24 those cases?

25 A. Yes, sir.

1 Q. What is your opinion with respect
2 to the handling of a shore wire by only one
3 employee?

4 A. It requires two men to do it
5 safely.

6 Q. What is the rationale for that
7 opinion? What is the reasoning for that?

8 A. Well, the weight of the wire, the
9 way they have to take it out of the water,
10 and the ability to handle wires safely and
11 put it over a cable or a timberhead
12 requires the use of two people to do it
13 properly and safely.

14 Q. Tell me, Mr. Campana, first of
15 all, you shared with me today your file.
16 And what I would like you to do, if you
17 would, is just go through and tell me what
18 the contents of your file would be. And
19 obviously what I am asking you to do is if
20 there is a deposition, tell me whose
21 deposition it is; if it is a document, tell
22 me what it is. And what I want to find out
23 is what the contents of your file would be.

24 A. I have Mr. Teddy Nichols'
25 deposition from July 10, 2002.

1 Mr. Timothy Ramey's deposition
2 taken on July 10, 2002.

3 I have Mr. Mark Clay's deposition
4 taken July 30, 2002.

5 Mr. Charles Johnson's deposition
6 taken February 12, 2003.

7 Mr. Michael Weisend's
8 deposition, W-e-i-s-e-n-d, on July 30,
9 2002.

10 Mr. Mark Clay's deposition,
11 again, taken February 12th.

12 A note from to Mr. Powers showing
13 the Philip Sporn Plant barge stowage for
14 standard barges and fleet diagrams.

15 Defendant's third supplementary
16 disclosure of expert testimony.

17 A report prepared by Mark G.
18 Strauss, Ph.D. for Mr. Powers dated March
19 12th.

20 I have United States Coast Guard
21 information pulled off the Internet, PSIX
22 exchange on the LAKIN TERMINAL.

23 Letters from Mr. Baun to me.

24 Plaintiff's mediation -- no.

25 This is yours.

1 Q. No, I think that's yours. That
2 came out of your file. Plaintiff's
3 mediation summary, is that what that is?

4 A. That's what it says.

5 Q. Okay, you don't remember having
6 that in your file?

7 A. No.

8 THE WITNESS:

9 Did you stick it in there
10 by chance this morning or did you leave it
11 on my desk?

12 MR. POWERS:

13 No.

14 MR. BAUN:

15 I might have brought it
16 down.

17 THE WITNESS:

18 I didn't see it.

19 MR. POWERS:

20 Okay, that's fine.

21 THE WITNESS:

22 The deposition of Steve
23 Edens taken November 26, 2002.

24 The report from the
25 University of Michigan from Gary D. Herrin,

1 Ph.D. dated January 19th to Mr. Baun.

2 Deposition of Jeff Darst
3 taken February 12, 2003.

4 Another deposition of
5 Mr. Teddy Nichols taken February 12, 2003.

6 My report, I have my
7 photos, the photos that your office sent to
8 me yesterday and the videotape which I
9 haven't seen, and my video.

10 EXAMINATION BY MR. POWERS:

11 Q. All right, the videotape that you
12 have not seen is the one that I sent you?

13 A. Yes, sir.

14 Q. And you received that yesterday
15 in your office?

16 A. Yes.

17 Q. Then the photos that you have
18 seen, that also came yesterday?

19 A. That came yesterday. I saw those
20 this morning.

21 Q. Do you have a curriculum vitae
22 here with you today?

23 A. That's attached to my report. I
24 can print another one out.

25 Q. Well, here's why I'm asking. I

1 am trying to figure out where I got this
2 document. Just bear with me one second.

3 Is that an old curriculum vitae,
4 the one I just handed you.

5 And we can mark it if you want
6 to. I just want to figure out what I'm
7 doing with it.

8 A. That's an old one from -- Yes, it
9 hasn't been updated. It doesn't have the
10 list of cases.

11 Q. Right. But it does have a
12 consulting agreement attached to it.

13 MR. BAUN:
14 It sets forth the fees.

15 MR. POWERS:
16 Yes.

17 MR. BAUN:
18 And where you would have
19 gotten that is on my initial identification
20 of experts I would have sent whatever. Pat
21 was working for me at the time, my
22 secretary, and she would have sent whatever
23 curriculum vitae she had at her desk, which
24 is probably the old one.

25 MR. POWERS:

1 All right.

2 EXAMINATION BY MR. POWERS:

3 Q. Let's do this. You said your
4 report has a current CV attached to it?

5 A. Yes.

6 Q. And list of cases?

7 A. Let's see. I can tell you in one
8 second because I think --

9 Q. What I was provided was a 12-page
10 report that includes a curriculum vitae.
11 Is that right?

12 A. That's it.

13 Q. Okay. Do you have an extra copy
14 of that or can we have a copy made to
15 attach? Because I am going to refer to it
16 and I would like to have it attached to the
17 deposition.

18 A. Sure, no problem.

19 Q. All right, can we use that one?

20 A. Yes.

21 MR. POWERS:

22 Let's mark that Exhibit 1,
23 and what we are making as Exhibit 1 is --

24 EXAMINATION BY MR. POWERS:

25 Q. It says it is a preliminary

1 report dated December 20, 2003; is that
2 right?

3 A. Yes.

4 Q. Are there any other reports?

5 A. No.

6 Q. Any drafts?

7 A. No.

8 Q. So this is the final report in
9 this case?

10 A. Unless I am asked to write
11 something additional, yes.

12 MR. BAUN:

13 Based on discussions we
14 have had in terms of the stipulation of
15 facts and the fact that I have just now
16 received photos and videos from
17 Mr. Strauss, his inspection and report,
18 there may be amendments or additions, but
19 you will receive those very quickly.

20 MR. POWERS:

21 But this is the latest
22 word from Ron Campana, Exhibit 1, okay.

23 EXAMINATION BY MR. POWERS:

24 Q. And what you are saying is you
25 may be asked to do something else, and if

1 you are, you are going to do it; correct?

2 A. Correct.

3 Q. Have you recommended any
4 additional investigation or anything else
5 to be done?

6 A. The only thing I recommended was,
7 after I saw the stipulations, getting
8 everyone to agree to what the correct
9 distance was.

10 Q. Yes, I think we are going to take
11 care of that. But that's it?

12 A. That's it.

13 MR. POWERS:

14 Okay, now, let's mark this
15 as Exhibit Number 2.

16 MR. BAUN:

17 Is that his current
18 curriculum vitae?

19 MR. POWERS:

20 No, that's the old one.

21 MR. BAUN:

22 Okay.

23 EXAMINATION BY MR. POWERS:

24 Q. Now, this Exhibit 2 has a
25 consulting agreement as part of it. Did

1 you enter into a consulting agreement with
2 Mr. Baun in this case?

3 A. No.

4 Q. There is no written agreement
5 such as the one attached there?

6 A. No. This is an old one.

7 Q. Yes. And I noticed that the
8 rates are different so I assumed it was an
9 old one.

10 A. This is from my old address, too.
11 This is over five years old.

12 Q. Well, it looks like it's got a
13 fax on it from '99, so I don't doubt your
14 word on that at all.

15 A. Okay.

16 Q. But my only --

17 MR. BAUN:

18 My apologies. I have to
19 update my secretary's document.

20 MR. POWERS:

21 Well, that's okay. I'm
22 not criticizing you either, but my only
23 purpose in making this an exhibit is I
24 wanted to find out is there a written
25 consulting agreement in this case.

1 EXAMINATION BY MR. POWERS:

2 Q. And your answer is no?

3 A. Correct.

4 Q. Okay. Tell me what it is that
5 you were asked to do in this case, please.

6 A. To review the information, visit
7 the Sporn Power Plant and render an opinion
8 if I thought that the operation that was
9 taking place was done in a professional,
10 safe method and if the operation that took
11 place and the injuries that occurred to
12 Mr. Nichols can be attributed to the
13 operations that were taking place as
14 alleged.

15 Q. Okay. Your -- Actually, before
16 we get to your report let me just ask you
17 this: You have licenses listed on your
18 curriculum vitae. And my question, I think
19 we went through this in the ELAINE G case,
20 but as I understand it, you have not been
21 employed as a master or member of a crew of
22 a vessel for quite some time; is that a
23 fair statement?

24 A. Yes, sir.

25 Q. Tell me when the last time you

1 would have been employed as a master or a
2 crew member aboard a navigable vessel would
3 have been.

4 A. 19 -- March 31, 1981.

5 Q. And you have never been either a
6 master or the member of a crew of a vessel
7 of the class of the LAKIN TERMINAL; is that
8 a fair statement?

9 A. Well, no. I was a mate on a
10 pushboat here in Louisiana.

11 Q. When was that?

12 A. 1973.

13 Q. What did that pushboat do?

14 A. Moved barges from New Orleans to
15 Grand Isle, water barges.

16 Q. Were you involved in the kinds of
17 duties that Mr. Nichols had as a deckhand
18 in this case?

19 A. Yes. I was a deckhand handling
20 wires, lines and everything else.

21 Q. And in that capacity --

22 A. Glorified deckhand.

23 Q. Right. Well, you had line
24 supervisory responsibility? In other
25 words, you probably had a man or two under

1 you; right?

2 A. I was a Kings Point graduate with
3 an unlimited license sailing as a deckhand
4 mate on a tugboat to earn money.

5 Q. Underemployed, as they say.

6 A. Well, the only jobs that were
7 available at the time.

8 Q. Okay. Were you involved in
9 spotting barges similar to what is
10 described in the testimony in this case?
11 Do you know what I mean by --

12 A. I understand what you mean by
13 spotting barges. Yes, we had to bring
14 barges to and from docks, yes.

15 Q. Were you involved at all with
16 coal barges?

17 A. No.

18 Q. Were you delivering any barges to
19 unloading facilities similar to the Sporn
20 plant with its crane?

21 A. No.

22 Q. In looking at your report on Page
23 2, it lists documents that you say were
24 reviewed as part of your opinion. And my
25 first question is, the documents that you

1 listed as part of your file, are those
2 documents all of the documents that you are
3 relying on in this case in order to form
4 the opinions and conclusions that you have
5 reached?

6 A. And my visit to the Sporn Power
7 Plant, yes.

8 Q. This list of documents on Page 2,
9 it seems to include some documents that are
10 not in your file.

11 A. Let's see.

12 Q. Maybe you can straighten me out
13 on this, but Number 8 says American
14 Electric Power files for Mr. Teddy Nichols.
15 I didn't see that in your file. Is it
16 there and we missed it?

17 A. It's possible there may be
18 something on my desk too, because I was
19 reviewing everything yesterday.

20 Q. Is it fair to say that -- Well,
21 let me just ask you to what extent are you
22 relying on the American Electric Power
23 files for Teddy Nichols in rendering
24 opinions in this case?

25 A. None. I think it was just for

1 proof of employment.

2 Q. What about item 9, the photocopy
3 of agreement between U. S. Steel Workers
4 and Indiana Michigan Power, and there are
5 pages listed there, 36, 37, 42, 43, 56 and
6 57. I don't see those in your file. And
7 so the point of my question is, are --
8 First, what are those pages; and, second,
9 are you relying on them in rendering
10 opinions in this case?

11 A. No, I am not relying on those in
12 rendering opinions and --

13 Q. Okay. Number 10 is the Safety
14 Rule Book for American Power River
15 Transportation. I know that in your report
16 you talked about one of those rules, at
17 least, but I don't see them in your file.
18 And let me say, I am not trying to trick
19 you. It may be that they are attached to a
20 deposition or something that is in your
21 file, but let me just ask you: Have you
22 reviewed the entire Safety Rule Book?

23 A. No.

24 Q. Is it fair to say that the
25 portions of the book that you have relied

1 on are the portions that are recorded in
2 your report?

3 A. Yes.

4 Q. So to the extent that the Safety
5 Rule Book required or contained other
6 provisions that might be inconsistent or
7 different than what you have cited in your
8 report, you haven't read them; is that
9 fair?

10 A. I wouldn't know if it was
11 inconsistent or not without reading it,
12 yes.

13 Q. But you would agree based on your
14 experience that a safety rule book applies
15 not only to the management of the company
16 that employs the individual, but to the
17 individual himself who is working on the
18 vessel?

19 A. Yes.

20 Q. Number 12 -- I'm sorry, Number
21 11, I'm sorry, Indiana Michigan Power
22 Company Water Transportation payroll
23 records. I didn't see those here. Are you
24 relying on those for any reason?

25 A. No.

1 Q. M/V LAKIN TERMINAL's vessel logs
2 August 27th, 28th and 29th. I didn't see
3 those here. Now, they may be attached to a
4 deposition, in fairness to you, but are you
5 relying on those specific documents for any
6 reason in particular?

7 A. No. They just generally confirm
8 that the vessel was working at Philip Sporn
9 Power Plant at the time.

10 Q. And item 14, item 15 and item 16
11 are, or purport to be a report of accident,
12 a Pleasant Valley Hospital record and a
13 Family Urgent Care record. First of all, I
14 don't see those here. Are they in your
15 file?

16 A. If I listed them, they were in my
17 file.

18 Q. But they are not today?

19 A. They may be in my office
20 somewhere.

21 Q. All right.

22 A. What I normally do, just for
23 clarification, stuff that really doesn't
24 pertain to me I separate.

25 Q. So 14, 15 and 16 would be things

1 that really don't pertain to you and you
2 are not relying on them?

3 A. I am not rendering any opinions
4 on medical issues or anything like that.

5 Q. Okay. Nos. 17, 18 and 19 are an
6 accident and injury reporting form, letters
7 and reports from Dr. McCleary, and 19 is
8 letters with certain dates from McCleary to
9 Todd, Dr. McCleary to Dr. Todd. I don't
10 see those in your file and you are not
11 relying on those; is that a fair statement?

12 A. Yes.

13 Q. And you list the inspection of
14 the Philip Sporn Plant on September 25,
15 2003. That is the inspection that I have
16 just looked at on the video.

17 A. Correct.

18 Q. And the video that I looked at is
19 a video that you took?

20 A. Yes.

21 Q. There was a professional
22 videographer there, I'm told. Have you
23 seen that video?

24 A. No.

25 Q. Okay. The drawings of the cell

1 and fleet arrangements listed as Number 21,
2 is that what was faxed to me this --

3 A. I believe so, yes.

4 MR. BAUN:

5 You mean by --

6 MR. POWERS:

7 Okay. I just committed --

8 Well, first of all, I just pointed to the
9 stipulation. Is it the drawings that were
10 attached to the stipulation?

11 MR. BAUN:

12 But there was --

13 MR. POWERS:

14 There was another thing,
15 too.

16 THE WITNESS:

17 Right; there was a letter
18 from them that said, "Todd, this appears to
19 be the fleet diagram."

20 MR. POWERS:

21 Yes; right, okay.

22 MR. BAUN:

23 But if you decided that of
24 the -- There were like three or four
25 diagrams that were sent to you, but you

1 said to me there were only one or two that
2 really --

3 THE WITNESS:

4 Right; some of them were
5 other --

6 MR. BAUN:

7 Just fleet diagrams?

8 THE WITNESS:

9 Right.

10 EXAMINATION BY MR. POWERS:

11 Q. And then 22 is the videotape
12 labeled "Barge Handler/Dockhand Safety
13 Training," and that is, I think, this
14 (indicating)?

15 MR. BAUN:

16 No. That's the one you
17 just gave me.

18 MR. POWERS:

19 Oh, I'm sorry.

20 But it was in your file.

21 I saw it.

22 THE WITNESS:

23 It may be just on my desk.

24 MR. BAUN:

25 It's here somewhere.

1 MR. POWERS:

2 It's here somewhere.

3 THE WITNESS:

4 Right here (indicating).

5 MR. POWERS:

6 Okay.

7 EXAMINATION BY MR. POWERS:

8 Q. Did you review that?

9 A. Yes.

10 Q. And I think you reference that in
11 your report.

12 A. Correct.

13 Q. Now, have we clarified and listed
14 everything that you have reviewed and
15 relied on in this case?

16 A. Yes.

17 Q. Okay. Let's talk about the
18 inspection for a second.

19 I looked at the video of the
20 inspection, and in reviewing the video,
21 and, of course, I have been there and I
22 have seen the operation take place, what is
23 it that you saw during the investigation or
24 learned that bears upon your opinions in
25 this case?

1 A. That the entire manner and the
2 method that they do it is not necessary.
3 It's improper and dangerous.

4 Q. And I think you have said that in
5 your report; is that fair?

6 A. Yes.

7 Q. Have you described your opinion
8 with regard to the safety issues presented
9 as you saw in the investigation, in the
10 inspection, have you listed those
11 completely in your report?

12 A. I believe so.

13 Q. Is there anything else that
14 occurred at the inspection that you are
15 relying on? One of the things I noted is
16 that you said in your report that the tests
17 conducted on September 25, 2003, showed a
18 shock load on a deckhand handling the wire
19 to be at least 180 pounds. That's on Page
20 5 of your report?

21 A. Yes.

22 Q. Where did you get that
23 information?

24 A. From the test that was done with
25 Dr. Herrin, isn't it?

1 MR. BAUN:

2 Yes.

3 EXAMINATION BY MR. POWERS:

4 Q. Did you witness the test?

5 A. Yes.

6 Q. Have you read his report?

7 A. Yes. I think he said 178. I

8 thought it said 180.

9 Q. You are relying on the testing
10 that he did in listing this -- Specifically
11 with regard to the statement that I just
12 read, you are relying completely on what
13 Herrin did?

14 A. What we witnessed and what he
15 recorded, yes.

16 Q. Okay. When you say "shock load"
17 what does that mean?

18 A. Shock load means in this
19 particular case the effect of the wire, the
20 rope/wire combination coming off the corner
21 of the empty barge and being allowed to
22 fall to the loaded barge, that height
23 differential with the weight of the wire is
24 what I call the shock load.

25 Q. And at what stage of the process

1 would that occur?

2 A. In the hand-off between the
3 deckhand on the light to the deckhand on
4 the loaded.

5 Q. All right. I watched the video
6 and I saw the deckhand hand a soft line
7 with an eye from the empty barge down to
8 the load.

9 MR. BAUN:

10 Could I just ask for a
11 clarification as to which video.

12 MR. POWERS:

13 Sure.

14 EXAMINATION BY MR. POWERS:

15 Q. I am talking about your video.

16 A. My video doesn't depict that.

17 Q. Well, I just watched it.

18 A. Well, I know, but it doesn't show
19 the small line, the protective line
20 breaking and the line going -- and the wire
21 going into the river.

22 Q. Okay.

23 A. It was taken --

24 Q. Well, let me back up for a
25 second. Here is what I did see, and we can

1 play it. It's not very long.

2 A. Yes.

3 Q. But what I did see is a long view
4 of a deckhand handing a soft line with an
5 eye attached to a wire from an empty barge
6 down to a load.

7 A. Correct.

8 Q. And you filmed that?

9 A. Yes.

10 Q. And you witnessed that when you
11 were there?

12 A. Yes.

13 Q. When that was done I didn't see
14 the wire fall off the corner, and I didn't
15 see a, quote, shock load being received by
16 the individual on the loaded barge. And my
17 question is, did that occur during the time
18 that those two deckhands were performing
19 that task at the time of your inspection?

20 A. Yes. What you saw was the first
21 attempt which the -- I don't know the
22 proper word for the device that measures
23 the pull --

24 Q. Yes.

25 A. -- wasn't hooked right.

1 Q. Okay.

2 A. So they redid it.

3 Q. Yes. You and I are missing each
4 other, I think.

5 A. Okay.

6 Q. But I am talking about initially,
7 meaning before the tensiometer or whatever
8 it's called, tension meter or whatever the
9 heck it is, before the measuring device was
10 even brought out, I believe the video shows
11 a deckhand, or two deckhands involved in
12 this process.

13 A. You're correct.

14 Q. Okay, now, my question is whether
15 I am correct that there was no shock load
16 on that pass of the line. The wire didn't
17 fall off the corner, there was a smooth
18 hand-off, and the 180-pound shock load that
19 you are describing didn't occur at least on
20 that particular hand-off.

21 A. Correct.

22 Q. Okay. Have you investigated or
23 reached any conclusions as to how often the
24 shock load that you are talking about, in
25 other words -- and I am going to say "shock

1 load" because it is easier than saying the
2 wire falling off the corner, but do you
3 know what we're talking about?

4 A. Yes.

5 Q. Have you done any investigation
6 or have you attempted to ascertain or
7 rendered an opinion as to how often that
8 would happen in the operation at the Sporn
9 plant?

10 A. The only thing I can base it on
11 is the three people who testified in
12 depositions, Mr. Ramey, Mr. Nichols and the
13 crane operator.

14 Q. Yes, Johnson.

15 A. Johnson, who said -- Between the
16 three of them they said it happens quite
17 frequently.

18 Q. So that I understand, you are
19 interpreting the depositions of Johnson,
20 Ramey and the plaintiff when they say from
21 time to time they would get jerked by a
22 lack of slack. That is what they said in
23 their depositions, is it not, that there
24 wasn't sufficient slack --

25 A. They attributed the lack of slack

1 to being jerked.

2 Q. Right. And what you are telling
3 me is that you interpret that to mean that
4 the wire has come off the corner of the
5 empty barge, fallen, and that fall has
6 caused a shock load as described in your
7 report?

8 A. Well, it's a little bit more
9 detailed than that. Mr. Ramey describes in
10 his deposition how he would hand the soft
11 line to Mr. Nichols, and then he says once
12 he grabbed hold of it he let go.

13 Q. Right.

14 A. Well, if he lets go, it has to
15 fall.

16 Q. Yes. It either falls to the deck
17 of the empty or it falls somewhere else,
18 but it is going to fall?

19 A. It's going to fall.

20 Q. Right, okay.

21 A. And that is initially what --
22 well, not initially, on the second try that
23 is what we measured. And it wasn't quite
24 the full seven, eight-foot height.

25 Q. Now, you are talking about when

1 the meter was used on the video?

2 A. Yes.

3 Q. I did not see the second try, did
4 I? You did not videotape that, did you?

5 A. No, I did not.

6 Q. Why not?

7 A. Because I got more involved with
8 helping them -- Gary was involved in trying
9 to tie it, and I didn't know if he knew how
10 to tie a knot properly.

11 MR. BAUN:

12 Thank you very much.

13 THE WITNESS:

14 Then I found out he did.

15 MR. POWERS:

16 I wouldn't, so that was a
17 good suspicion to have.

18 EXAMINATION BY MR. POWERS:

19 Q. Have you seen any video or
20 photograph of the second try that rendered
21 the 178 pounds?

22 A. No.

23 Q. Do I understand that what the
24 second try involved was you connect --
25 There was this meter, whatever, and I don't

1 know what they call it, but there was a
2 meter, a measuring device of some kind
3 attached to the wire. Is that --

4 A. Attached to the -- where the rope
5 meets the wire, yes.

6 Q. All right, but to the wire, not
7 the rope?

8 A. Correct.

9 Q. And what was the other end
10 attached to?

11 A. The timberhead, I believe.

12 Q. And then the wire was thrown off
13 the empty?

14 A. Basically.

15 Q. All right.

16 A. Actually, it was just let go. It
17 was just let go into the river.

18 MR. BAUN:

19 I would like to object
20 about the throwing --

21 MR. POWERS:

22 Well, I didn't
23 intentionally put throwing off.

24 THE WITNESS:

25 No, I understand, but it

1 was simply let go into the river so the
2 force, the pull of the wire would be
3 measured.

4 MR. POWERS:

5 Okay.

6 EXAMINATION BY MR. POWERS:

7 Q. And that measurement of 178
8 pounds is what you are describing in your
9 report, what you say is 180 rounding off?

10 A. I don't have my reading glasses.
11 Yes.

12 Q. Do you think it would make any
13 difference if the meter that we are talking
14 about was attached to the line as opposed
15 to the wire in terms of the measurement of
16 the tension?

17 A. I don't honestly know.

18 Q. Do you know why it is that
19 someone didn't just hold on to the meter as
20 Nichols or Ramey or a deckhand would be
21 holding on to the soft end of the line when
22 the wires dropped and the shock load is
23 supposedly incurred?

24 A. For safety. We didn't want to
25 injure somebody else.

1 MR. BAUN:

2 I was just going to say
3 that. I don't think anybody wanted to hold
4 it.

5 EXAMINATION BY MR. POWERS:

6 Q. Let me just ask you: Do you have
7 an opinion as to whether a deckhand could
8 actually hold on to a line and withstand
9 180 pounds of shock load without either
10 being pulled over or dropping the line in
11 the water?

12 A. There's a lot of variables
13 involved. I would say the average person
14 would either drop it or get pulled into the
15 river.

16 Q. Are you aware of any incident in
17 the entire history of this plant where an
18 employee has been pulled into the river?

19 A. No.

20 Q. Are you aware of any incident
21 where this alleged shock load caused an
22 employee to fall down and become injured
23 prior to Mr. Nichols?

24 A. No.

25 Q. You said that back in the '70s

1 you worked as a deckhand on a pushboat.

2 And I take it -- Let me just try to ask it
3 this way. You have been obviously around
4 boats and operationally around boats until
5 what, 1981?

6 A. Yes.

7 Q. You have seen deckhands doing
8 their work; right?

9 A. Correct.

10 Q. And when you were at this
11 investigation you saw deckhands putting
12 face wires on the boat?

13 A. Yes.

14 Q. How long are the face wires?

15 MR. BAUN:

16 Well, I would object.

17 MR. POWERS:

18 Well, strike that.

19 EXAMINATION BY MR. POWERS:

20 Q. How long were the face wires on
21 the LAKIN TERMINAL, if you know?

22 A. I don't know. They were
23 connected to the winches.

24 Q. Right. Do you know what typical
25 face wires measure on either harbor boats

1 such as the LAKIN TERMINAL or line hold
2 boats such as some of the larger AB boats?

3 A. I believe they are 90 footers.

4 Q. And I was watching the video and
5 I saw the deckhand placing the face wire by
6 himself on a timberhead. Do you have a
7 criticism of that?

8 A. No.

9 Q. Do you know how much force -- I
10 don't know what else to call it -- do you
11 have any idea how much force potentially
12 can be applied to a deckhand holding on to
13 a face wire should the boat fall away from
14 the barge or otherwise pull the deckhand?

15 MR. BAUN:

16 I guess I am going to have
17 to object to --

18 MR. POWERS:

19 Yes. That's a terrible
20 question. Let me try it again.

21 EXAMINATION BY MR. POWERS:

22 Q. I am talking about the face wire
23 operation.

24 A. Yes, sir.

25 Q. You have a single deckhand, and

1 what he is doing, and you can put this in
2 your mind, I think, as well as the rest of
3 us, he is facing the towboat. He's got a
4 timberhead in front of him. He is pulling
5 the slack out of the face wire and he's
6 going to put it on this timberhead; right?
7 Are you with me so far?

8 A. Correct. But it doesn't work
9 like that all the time.

10 Q. All right, but I am going to ask
11 you to assume that it works that way at
12 least some of the time.

13 A. Okay.

14 Q. There are various scenarios in
15 which a deckhand under those circumstances
16 could become injured; and you would agree
17 with that?

18 A. Yes.

19 Q. And there are various things that
20 can go wrong in that operation, including
21 current, and the boat not coming ahead
22 adequately could cause the boat to drift
23 away from the barge, the barge could be
24 bounced forward. There could be forces
25 applied that would cause the wire to pull

1 the deckhand.

2 A. Correct.

3 Q. You agree with that?

4 A. Yes, sir.

5 Q. Have you investigated, or to your
6 knowledge has anyone on behalf of the
7 plaintiff investigated what the relative
8 forces are at play in those kinds of
9 operations as compared to the operation
10 that you are criticizing in this case?

11 A. No, with the caveat it is two
12 separate and complete different operations.

13 Q. Okay. Have you ever made tow?

14 A. Yes.

15 Q. Then you are aware of what is
16 involved in pulling slack out of fore and
17 aft wires?

18 A. Yes.

19 Q. Putting the eye of the wire or
20 link into a pelican hook and using a
21 cheater bar to tighten it down?

22 A. Right.

23 Q. Do you have any idea of the
24 amount of stress, the force that is
25 involved in performing that work as it

1 would compare to the forces that are
2 described in your report and Mr. Herrin's
3 report?

4 A. No. Once again, it is two
5 separate and distinct operations in making
6 tow to use two deckhands and when you only
7 use one.

8 Q. Okay. You testified earlier that
9 you are involved in a case with Mr. Young
10 where an employee injured his back pulling
11 a shore wire out of the water?

12 A. Correct.

13 Q. Any idea of the forces at play in
14 pulling that wire out of the water as it
15 would compare to the shock load that was
16 measured in this case?

17 A. Once again, it was something
18 different. The tug dropped off.

19 Q. The tug dropped off and pulled
20 him; right?

21 A. Yes.

22 Q. And that is another potential
23 hazard for a seaman; isn't it?

24 A. Yes.

25 Q. And that would apply some kind of

1 force to that deckhand as the tug dropped
2 away; correct?

3 A. Correct.

4 Q. I take it you are critical of the
5 tug operator, the pilot in allowing that to
6 happen?

7 A. Well, the tug operator, the lack
8 of a radio, and the fact that there weren't
9 two deckhands.

10 Q. You refer to the safety video on
11 Page 4, and you say that the procedure used
12 at the Sporn plant is not mentioned and
13 described in that safety video; is that a
14 fair summary of what you say about that
15 video?

16 A. For the wire hooked up to the
17 barges, yes.

18 Q. Okay. And do you know whether
19 this safety video was intended to train
20 individuals as to how to do their job at
21 the Sporn plant?

22 A. Yes. It was the safety director,
23 I forget his name.

24 Q. Mr. Weisend.

25 A. Mr. Weisend testified that after

1 observing the operation, he decided he had
2 to make a video. And I found it strange
3 that he would use a different terminal to
4 make a video for this terminal, which is a
5 completely different operation.

6 Q. How long had Mr. Nichols been
7 performing this job? And by "this job" I
8 mean the job at the Sporn plant.

9 A. Well, refresh my memory. I know
10 he's done it but I don't know exactly how
11 long.

12 Q. Okay. I am going to suggest to
13 you that it is in his deposition, and we
14 can look, this isn't a memory test.

15 A. Right.

16 Q. But if he were doing it five
17 years, for instance, the duties for which
18 he would be responsible are something, you
19 would agree with me, that could be trained
20 through on-the-job training in that period
21 of time for someone of average
22 intelligence?

23 MR. BAUN:

24 You are saying "could be"?

25 MR. POWERS:

1 Yes.

2 MR. BAUN:

3 Okay.

4 EXAMINATION BY MR. POWERS:

5 Q. And more specifically my question
6 is, would you agree with me that someone of
7 average intelligence should be able to
8 learn how to perform the tasks which were
9 required of Mr. Nichols at the Sporn plant
10 through on-the-job training through someone
11 showing them physically how to do the job?

12 A. I would agree with that. But I
13 would also agree that what they were being
14 told and trained to do was not safe.

15 Q. Well, you have said that in your
16 report.

17 A. Right.

18 Q. But I am simply trying to, for
19 the moment, you have criticized the
20 training because the video doesn't show the
21 proper procedure.

22 A. Understood. But I am not going
23 to have my testimony reflect the fact that
24 just because he was trained to do something
25 for five years that he was trained

1 properly.

2 Q. I understand that.

3 A. Okay.

4 Q. But --

5 A. Yes. Anyone with intelligence
6 can be trained over five years to do
7 something properly.

8 Q. All right.

9 A. If the training procedure is
10 proper in the first place.

11 Q. Regardless of what video he might
12 have been shown when he was hired?

13 A. Right.

14 Q. Okay. Now, on Page 5 of your
15 report, you say --

16 MR. BAUN:

17 Could we just take a quick
18 break?

19 MR. POWERS:

20 Yes.

21 MR. BAUN:

22 I'll be right back. In
23 fact, why don't you just keep going.

24 (OFF THE RECORD)

25 MR. POWERS:

1 Back on the record.

2 EXAMINATION BY MR. POWERS:

3 Q. On Page 5 of your report, on your
4 Summary of Facts and Opinions, first of
5 all, this is captioned, "Summary of Facts
6 and Opinions," and then there is Number 1
7 in bold letters, Number 2, and then there
8 is a sentence in bold letters, and those
9 are, in fact, a summary of your opinions;
10 correct?

11 A. Correct.

12 Q. Now, you say under (1)(a) that
13 deckhands are require to handle a wire in
14 excess of 35 feet and that that -- What I
15 am reading here is you think that violates
16 the safety manual?

17 A. Correct.

18 Q. You don't have the safety manual
19 here, do you?

20 A. I have it somewhere.

21 Q. All right.

22 A. Not the manual; excerpts of it.

23 MR. POWERS:

24 Let me see. Do you have
25 it? Because I don't either.

1 Oh, here it is, never

2 mind.

3 EXAMINATION BY MR. POWERS:

4 Q. Over on Page 6 of your report --

5 A. Right.

6 Q. On your "Lifting And Carrying,"

7 you cite Page 12 of the Safety Rule Book.

8 It says, "Barge wires over 35 feet in

9 length must be lifted or carried" -- and

10 then you left a word out, I think, "by" --

11 "at least two workers." And that's the

12 rule that you are referring to?

13 A. Correct.

14 Q. And you believe that that was

15 violated in this case?

16 A. Yes. Even though it refers to

17 the fleet wires, the reason it's there is

18 the weight factor.

19 Q. Right. Well, obviously a barge

20 wire is not a fleet wire and it's not a

21 pullout cable. A barge wire is a very

22 specific wire; isn't it?

23 A. Yes, a barge wire is a very

24 specific wire, and the barge wires are very

25 similar in the weight factor as the pullout

1 cable.

2 Q. Right. But you would agree with
3 me that if the safety rules are referring
4 to barge wires, what they are referring to
5 is wires used to build tow, which would be
6 typically 30 feet, 35 feet and longer
7 portable wires that are carried out onto
8 the tow?

9 A. Well, what they are referring to
10 is for a reference, a weight factor.

11 Q. All right.

12 A. And you are not supposed to pick
13 up wires greater than 35 feet in length
14 because of the weight factor.

15 Q. I understand your opinion and I
16 appreciate it. I just want to make sure
17 that I've got this right. You agree with
18 me that a barge wire is a specific kind of
19 wire?

20 A. Yes.

21 Q. Okay. And this soft line that
22 was attached to the pullout cable, that is
23 not a barge wire. What was being handled
24 by Mr. Nichols was not a barge wire. You
25 are simply saying by analogy if that is the

1 rule for a barge wire, it ought to apply to
2 this job?

3 A. What I am saying is that the
4 Safety Rule Book referenced a specific wire
5 at 35 feet in length because of the weight
6 factor.

7 Q. I understand.

8 A. And anything in excess of that
9 weight factor --

10 Q. By analogy?

11 A. -- should not be lifted by more
12 than one person.

13 Q. But you are using an analogy --

14 A. Yes.

15 Q. -- to get to that conclusion?

16 A. Yes.

17 Q. Okay. (1)(b), you say that the
18 tug captain did not have a proper
19 understanding of how the barge hauling
20 cables worked because he believed the cable
21 had to be pulled slack by his tug. In
22 fact, the LAKIN TERMINAL can create slack
23 in the wire by pulling it; isn't that
24 correct?

25 A. Correct.

1 Q. So where is his misunderstanding?

2 A. No, no, he can't. It's the --
3 The crane operator has to create slack. He
4 thought it was a free-spooling deal. It's
5 not. It's under power.

6 Q. But the fact of the matter is
7 from the standpoint of the tug pilot, once
8 there is slack created he still can use the
9 tug to pull the slack to make the job
10 easier for the deckhand?

11 A. Yes, he can.

12 Q. And, in fact, that is part of the
13 operation?

14 A. That's what they do.

15 Q. Okay. He was wrong when he said
16 that it was a free-spooling effect, at
17 least as you read it, because you are not
18 going to spool the wire off of the winch by
19 virtue of the vessel?

20 A. Right. All I am saying here is
21 that he didn't have a proper understanding
22 of how it worked.

23 Q. Okay. You talk about the faulty
24 safety video on Page 6 under the caption
25 "Faulty Safety Video", and my question is,

1 do you agree with me that this lack of
2 information in the safety video did not
3 have anything to do with Nichols' injury?

4 A. I would say I can't make that
5 statement.

6 Q. Okay.

7 A. Agreeing to what you said, for
8 the simple reason had the video, in my
9 opinion, been produced properly with the
10 proper way of doing it, Mr. Nichols upon
11 reviewing the video would have said, "Hey,
12 wait a minute, this is not what we're
13 doing."

14 Q. I think what you are saying is,
15 and you say this in your report, there were
16 better ways to do this; right?

17 A. Correct.

18 Q. But my point is, if the video had
19 simply shown Nichols to do it the way he
20 was trained to do it and the way they were
21 doing it that day, it would not have made
22 any difference in this injury?

23 A. Correct.

24 Q. Okay. So really what you are
25 saying and in criticizing the video, I

1 mean, I understand you are saying first of
2 all, it shows a different situation; but,
3 secondly, they should have used a different
4 process is what you are saying; correct?

5 A. Second, yes. And I am saying
6 that the manner and method which they
7 showed tying lines to the timberhead are
8 improper and dangerous.

9 Q. Okay. Assuming that the safety
10 video showed the Sporn plant and showed the
11 procedure that was involved in this case,
12 the way he was trained to do it by
13 on-the-job training and the way he was
14 doing it that day, it was not going to
15 prevent this accident?

16 A. Correct.

17 Q. Okay. As I read your report you
18 are criticizing the way in which these
19 barges were being swapped out, for want of
20 a better term; am I right about that?

21 A. Yes, sir.

22 Q. And you are suggesting that there
23 might have been -- I think you give two
24 different methods but, again, correct me if
25 I am wrong, but I think I read two

1 different methods. One was -- Well, why
2 don't you just tell me what they are. What
3 are the methods that should have been used
4 to remove an empty and bring a load in?

5 A. The simplest way to do it is once
6 the barge is empty the tug comes up behind
7 it and removes the fleet wires, removes the
8 haul-out cables and just simply pushes it
9 up a cell, a cell and one half. That's it.
10 Ties it off, drops it back down. We would
11 already have another load pre-positioned at
12 the lower end, pick it up and slide it in.

13 Q. All right. And using that
14 method, would you agree with me that one
15 deckhand could safely perform that task?

16 A. You would have two deckhands, one
17 on each end or one together. But what
18 would happen is the haul-out cables, when
19 they took more, if you would have two
20 deckhands working together the haul-out
21 cables would come off the timberheads and
22 be placed right on the cell. So two
23 deckhands handle the wire. It's unsafe,
24 it's inefficient and probably just as much
25 time would take place, maybe a few minutes

1 more.

2 Q. All right. So what you are
3 suggesting is that they are both on the
4 empty and they take the upriver -- I don't
5 know if that's upriver actually -- yes, I
6 guess it is, the upriver --

7 A. They would take the downriver end
8 first.

9 Q. Yes. They take the downriver end
10 first and then they take the upriver end
11 and they simply push the barge forward?

12 A. Correct.

13 Q. Tie it off up in that area --

14 A. Right.

15 Q. -- and then bring the load in and
16 go back and get on the empty and take it to
17 the empty fleet?

18 A. Well, we already have the load
19 in. The load would be -- Okay, either way.
20 Either the load is in the fleet or if they
21 wanted to even expedite it, since they are
22 waiting, doing basically nothing while the
23 barge is being unloaded, bring another load
24 in to the lower cells into position, just
25 slide it in.

1 Q. That is one way that you say this
2 job would be safer?

3 A. Right.

4 Q. Is there another way?

5 A. Yes. Use two tugs.

6 Q. Explain that.

7 A. One tug grabs the empty and one
8 tug takes the load, if they are in that
9 much of a hurry.

10 Q. In your Conclusions on Page 7,
11 you say, "The Owners, Operators and Captain
12 of the tugboat LAKIN TERMINAL failed to
13 provide Mr. Teddy Nichols with a safe place
14 to work." Are your reasons for stating
15 that completely set forth in the report?

16 A. I believe so.

17 Q. The next conclusion we have
18 already talked about, the length of the
19 wire being handled by the deckhand/dock
20 worker were in violation of the safety rule
21 book. We have talked about that.

22 And then it says complaints about
23 this were ignored. What complaints? Who
24 made them and when?

25 A. In the depositions of Mr. Ramey,

1 Mr. Nichols and --

2 MR. BAUN:

3 Mr. Johnson.

4 THE WITNESS:

5 -- Mr. Johnson, they said

6 over the past they complained numerous

7 times and they were ignored.

8 EXAMINATION BY MR. POWERS:

9 Q. So you are relying upon that
10 deposition testimony for saying these
11 complaints were ignored?

12 A. From those three separate
13 individuals.

14 Q. No other source of information on
15 that?

16 A. Correct.

17 Q. One, two, three, four, five
18 conclusions down you say that AEP failed to
19 undertake standard periodic inspection of
20 their equipment.

21 What do you mean by that?

22 A. If they had done a thorough
23 investigation of this policy and procedure
24 and looked at their equipment being
25 involved, they would have realized that the

1 wires being asked to be handled were too
2 heavy for one man.

3 Q. I'm sorry. Just say that one
4 more time.

5 A. It relates to the length of the
6 wire and the weight of the wire, so a
7 normal inspection of what takes place, in
8 that context.

9 Q. In other words, here's what I
10 think you are saying and correct me if I am
11 wrong, you are saying if anybody had taken
12 a hard look at this, they would have seen
13 that there was something dangerous going
14 on?

15 A. Yes.

16 Q. You say that AEP and M/V LAKIN
17 TERMINAL violated the provisions of the
18 American Waterway Operators Guideline. Is
19 that the Responsible Carrier Program?

20 A. Yes.

21 Q. Do you know whether there was an
22 audit of this procedure by the Responsible
23 Carrier Program?

24 A. No, I don't.

25 MR. POWERS:

1 I don't have any further
2 questions.

3 MR. BAUN:

4 I have a question.

5 (OFF THE RECORD)

6 MR. POWERS:

7 I want to ask just a
8 couple of more questions, and I apologize.

9 EXAMINATION BY MR. POWERS:

10 Q. First, there are some photos here
11 that I want to mark collectively as Exhibit
12 3, and those are photos that you took at
13 the inspection; correct?

14 A. Correct.

15 Q. At the time that you were there
16 for the inspection, do you recall whether
17 they were standard or jumbo barges being
18 unloaded?

19 A. I think they were standard.

20 Q. And you have read Mr. Nichols'
21 testimony?

22 A. Yes.

23 Q. Do you agree that he doesn't
24 know, according to his testimony, whether
25 he was on a standard or a jumbo?

1 A. He doesn't remember which barge;
2 correct.

3 Q. Have you reviewed any records to
4 try to determine whether there were
5 standards or jumbos there on the two or
6 three days that this potentially occurred?

7 A. I think there was both.

8 Q. There was some comment made by
9 Mr. Baun that he thought the distances were
10 different, looking at your video and our
11 video, the distances between the barges.
12 Did you take measurements of the distance
13 between the deck of the empty barge and the
14 deck of the loaded barge on the day that
15 your inspection was done?

16 A. Yes. I think it was eight feet.

17 Q. You think it was eight feet. Did
18 you measure it personally?

19 A. I measured it and someone else
20 measured it.

21 Q. Do you have any notes or records
22 that indicates --

23 A. Well, it depends where you took
24 your measurements from, because it was a
25 rake barge.

1 Q. Yes. So at the rake it is going
2 to be a shorter distance than on the side?

3 A. No. At the rake, it's a higher
4 distance.

5 Q. Well --

6 A. At the headlock.

7 Q. Yes, okay. Let me back up.

8 You are suggesting to me that the
9 rake of the empty is going to be pointed up
10 in the air; right?

11 A. Yes.

12 Q. And if you are dealing with a box
13 as a load, there is going to be a greater
14 distance. But if you have a rake as a
15 load, then --

16 A. You're talking about --

17 Q. I am saying that --

18 A. There is a differential between
19 rake to rake and rake to box, yes.

20 Q. Exactly. And that might account
21 for the difference?

22 A. And it depends on the depths of
23 the barges, the two barges. There are many
24 variables; correct.

25 Q. Right. So depending upon those

1 variables, you might have a five to
2 six-foot difference, you might have an
3 eight-foot difference; is that a fair
4 estimation?

5 A. I would say the difference would
6 be between the light and the loaded a
7 minimum of seven feet to a maximum of nine
8 to ten feet.

9 MR. POWERS:

10 The next thing I want to
11 do is mark as Exhibit 4 your videotape, and
12 you have agreed to send me a copy of that,
13 and I want to make sure the sound is on it,
14 too.

15 THE WITNESS:

16 Not a problem.

17 MR. POWERS:

18 Thank you.

19 Now, the last thing I want
20 to put on the record, I have not been
21 provided the professional video, and I am
22 saying this because I know that you said it
23 has been sent to me. I don't have it and I
24 know you will send it to me. We have been
25 working together for a long time. But if I

1 see anything in that video that I think I
2 need to ask Mr. Campana, then I reserve the
3 right to depose him on those issues. And
4 should he issue any additional reports or
5 opinions, likewise; I probably could do it
6 by phone if we all agree to it. But
7 anyway, I just want to reserve that right.

8 Thank you.

9 MR. BAUN:

10 Did you want to say
11 something?

12 THE WITNESS:

13 Well, did you want to --

14 MR. POWERS:

15 Off the record.

16 (OFF THE RECORD)

17 MR. BAUN:

18 It has become apparent in
19 the last couple of days to a week that we
20 now believe that there are four videos of
21 various -- well, two barge inspections:
22 One taken by Mr. Powers' partner,
23 Mr. Schroeder, one taken by a professional
24 videographer whom I hired, one taken by
25 Mr. Campana, my retained expert, and a

1 third -- or a fourth taken by or on behalf
2 of a Mr. Strauss, Mr. Powers' expert.

3 When we finally get it
4 straightened out that both sides have all
5 four videos and pictures, I think we all
6 reserve the right to either amend reports
7 or the right to retake the depositions of
8 each other's experts.

9 How is that? Fair enough?

10 MR. POWERS:

11 Fair enough.

12

13 (Whereupon the deposition was concluded)

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1 WITNESS' CERTIFICATE

2

3 I, RON CAMPANA, have read or have
4 had the foregoing testimony read to me and
5 hereby certify that it is a true and
6 correct transcription of my testimony with
7 the exception of any attached corrections
8 and changes.

9

10 () No corrections

11 () Corrections attached

12

13

14 _____
RON CAMPANA

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1 REPORTER'S CERTIFICATE

2

3 I, JULIANNE W. ANDRESSEN,

4 Certified Court Reporter in and

5 for the State of Louisiana do hereby

6 certify that the within witness, after

7 having been duly sworn by the Reporter to

8 testify to the truth, the whole truth and

9 nothing but the truth, did testify as

10 hereinabove set forth in the foregoing

11 pages;

12 That the testimony was reported

13 by me and transcribed under my personal

14 supervision, and is a true and correct

15 transcript to the best of my ability and

16 understanding;

17 That I am not of Counsel, nor

18 related to Counsel or the parties hereto,

19 and in no way interested in the outcome of

20 this event.

21

22

23 _____
JULIANNE W. ANDRESSEN

24 CERTIFIED COURT REPORTER

25 In and for the State of Louisiana

